

Senate Study Bill 1163

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
COMMERCE/DIVISION OF
BANKING BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation of the business of debt
2 management and making penalties applicable.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1228DP 83
5 rn/nh/14

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1 1 Section 1. Section 533A.1, Code 2009, is amended to read
1 2 as follows:
1 3 533A.1 DEFINITIONS.
1 4 As used in this chapter:
1 5 ~~1. "Allowable cost" means an actual, identifiable~~
~~1 6 third-party expense incurred by the licensee on behalf of a~~
~~1 7 specific debtor, such as postage and long distance telephone~~
~~1 8 charges, that may be itemized and charged against the debtor~~
~~1 9 for payment.~~
1 10 ~~2. 1. "Creditor" means a person who grants credit, a~~
~~1 11 person who takes assignment of the rights to payments of a~~
~~1 12 person who grants credit, or a person for whose benefit moneys~~
1 13 are being collected and distributed by ~~licensees~~ a licensee.
1 14 ~~3. 2. "Debt management" means the planning and management~~
~~1 15 of the financial affairs of a debtor and the receiving~~
~~1 16 therefrom of money or evidences thereof for the purpose of~~
~~1 17 distributing the same to the debtor's creditors in payment or~~
~~1 18 partial payment of the debtor's obligations for a fee, when~~
~~1 19 done for a fee, any of the following:~~
1 20 a. Arranging or negotiating, or attempting to arrange or
1 21 negotiate, the amount or terms of debt owed by a debtor to a
1 22 creditor.
1 23 b. Receiving from a debtor, directly or indirectly, money
1 24 or evidences thereof for the purposes of distributing the same
1 25 to one or more creditors of the debtor in payment or partial
1 26 payment of the debtor's obligations.
1 27 c. Serving as an intermediary between a debtor and one or
1 28 more creditors of the debtor for the purpose of obtaining
1 29 concessions from the creditors.
1 30 d. Engaging in debt settlement.
1 31 3. "Debt settlement" means seeking to settle the principal
1 32 amount of a debtor's debts with creditors for less than the
1 33 principal amounts owed on the debts.
1 34 4. "Debtor" means any natural person.
1 35 5. "Donation" means money given by the debtor to a
2 1 licensee as a gift for debt management and outside of the debt
2 2 management contract.
2 3 6. "Fee" means the moneys paid by the debtor to the
2 4 licensee as payment for debt management and shall not include
2 5 money paid to the licensee or held by the licensee for
2 6 distribution to a creditor, ~~allowable costs~~, a distribution to
2 7 the debtor as a refund, or a donation.
2 8 7. "Gratuitous debt-management service" means debt
2 9 management without charging a fee.
2 10 8. "Licensee" means any person licensed under this
2 11 chapter.
2 12 9. "Natural person" means an individual who is not an
2 13 association, joint venture, or joint stock company,
2 14 partnership, limited partnership, business corporation,
2 15 nonprofit corporation, other business entity, or any group of
2 16 individuals or business entities, however organized.
2 17 10. "Office" means each location by street number,
2 18 building number, city, and state where any person engages in

2 19 debt management.

2 20 11. "Person" means an individual, an association, joint
2 21 venture or joint stock company, partnership, limited
2 22 partnership, business corporation, nonprofit corporation, or
2 23 any other group of individuals however organized.

2 24 12. "Superintendent" means the superintendent of banking.

2 25 Sec. 2. Section 533A.2, subsection 2, Code 2009, is

2 26 amended by adding the following paragraph:

2 27 NEW PARAGRAPH. h. A person licensed under chapter 533C,
2 28 including that person's authorized delegates as defined in
2 29 section 533C.102, or a person exempt from licensing under
2 30 section 533C.103, when engaging in money transmission or
2 31 currency exchange as defined in chapter 533C.102.

2 32 Sec. 3. Section 533A.2, subsection 3, Code 2009 is amended
2 33 to read as follows:

2 34 3. The application for a license shall be in the form
2 35 prescribed by the superintendent. If the applicant is not a
3 1 natural person, a copy of the legal documents creating the
3 2 applicant shall be filed with the application. The
3 3 application shall contain all of the following:

3 4 a. The name of the applicant.

3 5 b. If the applicant is not a natural person, the type of
3 6 business entity of the applicant and the date the entity was
3 7 organized.

3 8 c. If the applicant is a foreign corporation, both of the
3 9 following:

3 10 (1) An irrevocable consent, duly acknowledged, that suits
3 11 and actions may be commenced against the licensee in the
3 12 courts of this state by service of process performed as
3 13 provided in section 617.3 or as provided in the Iowa rules of
3 14 civil procedure.

3 15 (2) Proof of authorization to do business in this state.

3 16 ~~e- d.~~ The address where the business is to be conducted,
3 17 including information as to any branch office of the
3 18 applicant.

3 19 ~~d- e.~~ The name and resident address of the applicant's
3 20 owner or partners, or, if a corporation, association, or
3 21 agency, of the members, shareholders, directors, trustees,
3 22 principal officers, managers, and agents.

3 23 f. The name, physical address, and telephone number of the
3 24 licensee's agent for service of process.

3 25 ~~e- g.~~ Other pertinent information as the superintendent
3 26 may require, including a credit report.

3 27 Sec. 4. Section 533A.2, subsection 5, Code 2009, is
3 28 amended to read as follows:

3 29 5. Each applicant shall furnish with the application a
3 30 description of its proposed debt management program, a copy of
3 31 the disclosures it will be providing debtors pursuant to
3 32 section 533A.8, subsection 3, and a copy of the contract the
3 33 applicant proposes to use between the applicant and the
3 34 debtor, which shall contain a schedule of fees to be charged
3 35 the debtor for the applicant's services pursuant to section
4 1 533A.8, subsection 4.

4 2 Sec. 5. Section 533A.8, Code 2009, is amended by striking
4 3 the section and inserting in lieu thereof the following:

4 4 533A.8 LICENSEE REQUIREMENTS.

4 5 1. A licensee shall describe the methodology of its debt
4 6 management program to each potential debtor client so that the
4 7 debtor can make an informed decision as to whether or not the
4 8 licensee's program is an appropriate option for the debtor.

4 9 2. A licensee shall conduct a comprehensive review of a
4 10 debtor's debts and monthly budget and make a determination
4 11 that the licensee's program is an appropriate option for the
4 12 debtor before entering into a contract with the debtor. A
4 13 licensee shall not accept an account unless a written and
4 14 thorough budget analysis has been performed which indicates
4 15 that the debtor can meet the requirements determined by the
4 16 budget analysis.

4 17 3. a. A licensee, including any third party who markets
4 18 or sells a debt management program on behalf of a licensee,
4 19 shall make the following disclosures to a debtor both verbally
4 20 and in writing before the debtor signs a contract to enroll in
4 21 the debt management program:

4 22 (1) The total estimated fee the debtor will pay for
4 23 participating in the program if the debtor remains in the
4 24 program for the entire term of the contract.

4 25 (2) That the licensee cannot guarantee any specific
4 26 results from participation in the program.

4 27 (3) That the debtor may elect to discontinue participation
4 28 in the program without penalty at any time during the program.

4 29 (4) If the program includes obtaining concessions

4 30 regarding the principal amount of the debt from creditors,
4 31 that any concessions may be considered income to the debtor
4 32 subject to income tax.

4 33 (5) If the program is based on a model which does not
4 34 require the licensee or another licensee to receive money or
4 35 evidence thereof from the debtor to distribute to the debtor's
5 1 creditors, the following:

5 2 (a) That payments are not made to creditors on the
5 3 debtor's behalf, so the debtor is still obligated to make
5 4 payments to creditors.

5 5 (b) That creditors may continue to try to collect the
5 6 debtor's debts while the debtor is enrolled in the program.

5 7 (6) If the program is a debt settlement program, that the
5 8 following may occur:

5 9 (a) The debtor's credit report and credit score may be
5 10 harmed by participating in the program.

5 11 (b) Failure to make required minimum payments to the
5 12 debtor's creditors may violate the debtor's agreement with the
5 13 creditors and may result in additional charges, such as late
5 14 fees, over limit fees, and penalties and creditors may raise
5 15 the debtor's interest rate.

5 16 (c) The debtor may be sued by creditors if the debtor
5 17 fails to make required minimum payments to the debtor's
5 18 creditors.

5 19 b. The verbal disclosures required pursuant to this
5 20 subsection shall be made at a normal rate of speech in a
5 21 manner designed to ensure the debtor understands the
5 22 disclosures. The written disclosures shall be provided in a
5 23 separate document from the contract between the licensee and
5 24 the debtor and shall be designed to ensure the debtor
5 25 understands the disclosures. It is a violation of this
5 26 chapter for a licensee, or any third party who markets or
5 27 sells a debt management program on behalf of a licensee, to
5 28 contradict these disclosures in any representation,
5 29 advertising, or solicitation.

5 30 4. A licensee shall make a written contract with a debtor
5 31 and shall immediately and before collecting any fee, furnish
5 32 the debtor with a true copy of the contract. A contract shall
5 33 not extend for a period longer than sixty months. The
5 34 contract between a licensee and a debtor shall include all of
5 35 the following:

6 1 a. The total estimated charges agreed upon for the
6 2 services of the licensee and any third parties providing
6 3 services for or in conjunction with the licensee.

6 4 b. A statement of how and when the charges are to be paid.

6 5 c. A statement that the debtor may elect to discontinue
6 6 participation in the program without penalty at any time
6 7 during the program.

6 8 d. The beginning and expiration date of the contract.

6 9 e. The name, physical address, and telephone number of the
6 10 licensee.

6 11 f. A description of the services to be provided by the
6 12 licensee, which shall include educational and counseling
6 13 services designed to assist the debtor in managing the
6 14 debtor's borrowing, spending, and saving habits.

6 15 g. If the debt management program is a debt settlement
6 16 program, the following:

6 17 (1) A comprehensive list of every debt at the time of
6 18 enrollment that is to be negotiated for settlement by the
6 19 licensee, including the creditors' names and identifying
6 20 information.

6 21 (2) The estimated amount of money needed to fund
6 22 settlements.

6 23 h. If the debt management program is based on a model
6 24 which requires the licensee or any licensee to receive money
6 25 or evidences thereof from the debtor to distribute to the
6 26 debtor's creditors, the contract shall set forth the complete
6 27 list of creditors who are to receive payments under the
6 28 contract.

6 29 5. If the debt management program is based on a model
6 30 which requires the licensee or any licensee to receive money
6 31 or evidences thereof from the debtor to distribute to the
6 32 debtor's creditors, the licensee who receives the money or
6 33 evidences thereof from the debtor for distribution to the
6 34 debtor's creditors shall do all of following:

7 1 a. Maintain a separate bank trust account in which all
7 2 payments received from debtors for the benefit of creditors
7 3 shall be deposited and in which all payments shall remain
7 4 until a remittance is made to either the debtor or the
7 5 creditor.

7 5 b. Make remittances to creditors within forty-five days

7 6 after initial receipt of funds, and thereafter remittances
7 7 shall be made to creditors within thirty days of receipt, less
7 8 fees, unless the reasonable payment of one or more of the
7 9 debtor's obligations requires that such funds be held for a
7 10 longer period so as to accumulate a sum certain.

7 11 c. Provide each debtor a monthly written statement of
7 12 disbursements made and fees deducted from the debtor's
7 13 account. The licensee shall also provide a verbal accounting
7 14 of disbursements made and fees deducted from the debtor's
7 15 account at any time the debtor requests it during normal
7 16 business hours.

7 17 d. Not receive any fee, or have or cause any fee to be
7 18 received by any other licensee, other than the initiation fee
7 19 permitted in section 533A.9, subsection 2, unless the licensee
7 20 has the consent of at least fifty percent of the total number
7 21 of the creditors listed in the licensee's contract with the
7 22 debtor, or such a like number of creditors have accepted a
7 23 distribution of payment. The debtor shall be informed by the
7 24 licensee of those creditors who have not agreed to the
7 25 licensee's handling of the account.

7 26 6. If the debt management program is not based on a model
7 27 which requires the licensee or any licensee to receive money
7 28 or evidences thereof from the debtor to distribute to the
7 29 debtor's creditors, both of the following shall apply:

7 30 a. The debtor shall maintain full control of and access to
7 31 any moneys set aside for payment to creditors.

7 32 b. The licensee may not receive consideration from any
7 33 third party in connection with services rendered to a debtor.

7 34 7. A licensee shall keep, and use in the licensee's
7 35 business, books, accounts, and records which will enable the
8 1 superintendent to determine whether such licensee is complying
8 2 with the provisions of this chapter, any applicable state or
8 3 federal laws or regulations, and the rules and regulations of
8 4 the superintendent. A licensee shall preserve such books,
8 5 accounts, and records for at least five years after making the
8 6 final entry on any transaction recorded therein. Records
8 7 shall contain complete information regarding all contracts,
8 8 extensions thereof, payments, disbursements, and charges,
8 9 which records shall be open to inspection by the
8 10 superintendent and the superintendent's duly appointed agents
8 11 during normal business hours.

8 12 8. In the event a compromise of a debt is arranged by a
8 13 licensee with one or more creditors, the debtor shall have the
8 14 full benefit of such compromise.

8 15 9. All licensee advertising content, and data supporting
8 16 any claims made in the advertising, shall be maintained in
8 17 retrievable format and available to the superintendent for
8 18 inspection for a minimum of five years.

8 19 10. If the licensee maintains an internet website, the
8 20 licensee shall make available on its internet website a
8 21 physical address for its headquarters, a main telephone
8 22 number, and an electronic mail contact address.

8 23 11. The superintendent may adopt additional requirements
8 24 applicable to licensees pursuant to administrative rule.

8 25 Sec. 6. Section 533A.9, Code 2009, is amended to read as
8 26 follows:

8 27 533A.9 FEE AGREED IN ADVANCE.

8 28 1. The fee of the a licensee charged to the a debtor shall
8 29 be agreed upon in advance and stated in the contract and
8 30 provision for settlement in case of cancellation or prepayment
8 31 shall also be clearly stated in the contract. The fee of the
~~8 32 licensee charged to the debtor shall not exceed fifteen~~
~~8 33 percent of any payment made by the debtor and distributed to~~
~~8 34 the creditors pursuant to the contract. In case of total~~
~~8 35 payment of the contract before the contract period has~~
~~9 1 expired, the licensee shall be entitled only to a fee of no~~
~~9 2 more than three percent of the final payment.~~

9 3 2. A debtor may be charged a one-time initiation fee for
9 4 debt management services, which shall not exceed fifty
9 5 dollars.

9 6 3. If a debt management program is based on a model that
9 7 required the licensee or any other licensee to receive money
9 8 or evidences thereof from the debtor to distribute to the
9 9 debtor's creditors, the debtor may not be charged a fee
9 10 exceeding the initiation fee permitted in subsection 2 plus a
9 11 fee not to exceed fifteen percent of amounts actually applied
9 12 to the debtor's accounts with the creditors. Other than the
9 13 initiation fee, the debtor shall at no time be required to pay
9 14 fees exceeding fifteen percent of amounts actually applied to
9 15 the debtor's accounts with the creditors.

9 16 4. a. If a debt management program is not based on a

9 17 model that requires the licensee or another licensee to
9 18 receive money or evidences thereof from the debtor to
9 19 distribute to the debtor's creditors, a debtor may not be
9 20 charged a fee exceeding the sum of the following:
9 21 (1) The initiation fee permitted in subsection 2.
9 22 (2) An additional fee not to exceed five percent of the
9 23 total amount of the debtor's debts enrolled in the licensee's
9 24 program at the time the debtor enrolled in the program.
9 25 (3) The fees permitted in subsection 6, if applicable.
9 26 b. A licensee shall collect the additional fee permitted
9 27 in paragraph "a", subparagraph (2), in equal monthly
9 28 installments spread over the entire term of the contract
9 29 between the debtor and the licensee. The debtor may elect to
9 30 discontinue participation in the program at any time during
9 31 the program by providing written notice to the licensee. The
9 32 debtor's obligation for future installments to the licensee
9 33 ends upon the licensee's receipt of the notice, but the debtor
9 34 remains liable for installments due the licensee prior to
9 35 receipt of the notice.

10 1 5. Any services provided by a third party, including lead
10 2 generating, marketing, and selling services, shall be paid for
10 3 by the licensee. Under no circumstances shall a debtor be
10 4 required to pay a fee to a third party to obtain a licensee's
10 5 services.

10 6 6. If the licensee's program is a debt settlement program
10 7 and the program does not require the licensee or another
10 8 licensee to receive money or evidences thereof from the debtor
10 9 to distribute to the debtor's creditors, the debtor may be
10 10 charged an additional fee not to exceed twenty percent of the
10 11 difference between the amount of the debt at the time the
10 12 debtor enrolled in the licensee's program and the amount paid
10 13 to settle the debt in full. The licensee shall not collect
10 14 this fee until the creditor provides a written certification
10 15 or confirmation that the payment has been received and is in
10 16 full settlement of the debt.

10 17 Sec. 7. Section 533A.11, Code 2009, is amended to read as
10 18 follows:

10 19 533A.11 UNLAWFUL ACTS OF LICENSEE.

10 20 It shall be is unlawful and a violation of this chapter for
10 21 the holder of any license issued under the terms and
10 22 provisions hereto this chapter:

10 23 1. To purchase from a creditor any obligation of a debtor.

10 24 2. To operate as a collection agent and as a licensee as
10 25 to the same debtor's account without first disclosing in
10 26 writing such fact to both the debtor and creditor.

10 27 3. To execute any contract or agreement to be signed by
10 28 the debtor unless the contract or agreement is fully and
10 29 completely filled in and finished.

10 30 4. To receive or charge any fee in the form of a
10 31 promissory note or other promise to pay, or receive or accept
10 32 any mortgage or other security for any fee, both as to real or
10 33 personal property.

10 34 5. To pay any bonus or other consideration to any
10 35 individual, agency, partnership, unincorporated association,
11 1 or corporation for the referral of a debtor to the licensee's
11 2 business, or to accept or receive any bonus, commission, or
11 3 other consideration for referring any debtor to any
11 4 individual, partnership, unincorporated association, agency,
11 5 or corporation for any reason.

11 6 6. To advertise the licensee's services, display,
11 7 distribute, broadcast, or televise, or permit to be displayed,
11 8 advertised, distributed, broadcast, or televised the
11 9 licensee's services in any manner inconsistent with the law.

11 10 7. To make, or facilitate the debtor in making, any false
11 11 or misleading claim regarding a creditor's right to collect a
11 12 debt.

11 13 8. To dispute, or facilitate the debtor in disputing, the
11 14 validity of a debt absent a good faith belief by the debtor
11 15 that the debt is not validly owing.

11 16 9. To challenge a debt without the written consent of the
11 17 debtor.

11 18 10. To provide or offer to provide legal advice or legal
11 19 services unless the person providing or offering to provide
11 20 legal advice is licensed to practice law in the state in which
11 21 the debtor resides.

11 22 11. To execute a power of attorney or any other written
11 23 agreement that extinguishes or limits the debtor's right to
11 24 contact or communicate with any creditor.

11 25 12. To take a wage assignment, a lien of any type on real
11 26 or personal property, or other security to secure the payment
11 27 of compensation. Any such security is void and unenforceable.

11 28 13. To induce or attempt to induce a debtor to enter into
11 29 a contract which does not comply in all respects with the
11 30 requirements of this chapter.

11 31 14. Where applicable, to make any statements, or allow a
11 32 third party marketing or selling the licensee's program to
11 33 make any statements, in the course of advertising or
11 34 solicitation that contradicts the disclosures required by
11 35 section 533A.8.

12 1 15. When the licensee's program is a debt settlement
12 2 program, the following:

12 3 a. To advise a debtor to stop making payments to
12 4 creditors.

12 5 b. To lead a debtor to believe that a payment to a
12 6 creditor is in settlement of a debt to the creditor unless the
12 7 creditor provides a written certification or confirmation that
12 8 the payment is in full settlement of the debt, or is part of a
12 9 payment plan that is in full settlement of the debt.

12 10 c. To make any of the following representations:

12 11 (1) The licensee will furnish money to pay bills or
12 12 prevent attachments.

12 13 (2) Payment of a certain amount will guarantee
12 14 satisfaction of a certain amount or range of indebtedness.

12 15 (3) Participation in a program will prevent debt
12 16 collection calls, litigation, garnishment, attachment,
12 17 repossession, foreclosure, eviction, or loss of employment.

12 18 (4) Participation in a program will not harm the debtor's
12 19 credit report or credit score.

12 20 (5) Participation in a program will prevent the debtor
12 21 from having to declare bankruptcy.

12 22 (6) That the licensee is authorized or competent to
12 23 furnish legal advice or perform legal services.

12 24 (7) That the licensee's negotiations with creditors will
12 25 result in the elimination of adverse information on the
12 26 debtor's credit report.

12 27 Sec. 8. NEW SECTION. 533A.17 WAIVER NOT ALLOWED.

12 28 A waiver by a debtor of the provisions of this chapter is
12 29 void and unenforceable as contrary to public policy. An
12 30 attempt by a licensee to induce a debtor to waive the debtor's
12 31 rights is a violation of this chapter.

12 32 Sec. 9. Section 533A.6, Code 2009, is repealed.

12 33 EXPLANATION

12 34 This bill relates to the regulation of the business of debt
12 35 management pursuant to Code chapter 533A.

13 1 The bill modifies definitions applicable to debt
13 2 management. The bill adds to the definition of a "creditor" a
13 3 person who grants credit or who takes assignment of the rights
13 4 to payments of a person granting credit. The bill expands the
13 5 definition of "debt management" to mean arranging or
13 6 negotiating, or attempting to arrange or negotiate, for a fee,
13 7 the amount or terms of debt owed by a debtor to a creditor;
13 8 receiving from a debtor, directly or indirectly, money or
13 9 evidences thereof for the purposes of distributing it to one
13 10 or more creditors of the debtor in payment or partial payment
13 11 of the debtor's obligations; serving as an intermediary
13 12 between a debtor and one or more creditors of the debtor for
13 13 the purpose of obtaining concessions from the creditors, or
13 14 engaging in debt settlement. The bill defines "debt
13 15 settlement" as seeking to settle the principal amount of a
13 16 debtor's debts with creditors for less than the principal
13 17 amounts owed on the debts. The bill additionally deletes a
13 18 definition of "allowable cost" which was not utilized within
13 19 the chapter.

13 20 The bill adds to the list of persons exempt from the
13 21 chapter's licensing requirements a person licensed pursuant to
13 22 Code chapter 533C in connection with money transmission or
13 23 currency exchange and related persons as specified in the
13 24 bill.

13 25 The bill requires additional information to be supplied on
13 26 an application for licensure, including in the case of a
13 27 foreign corporation applicant a duly acknowledged irrevocable
13 28 consent that suits and actions may be commenced against the
13 29 licensee by service of process performed as provided in Code
13 30 section 617.3 or as provided in the Iowa rules of civil
13 31 procedure, and proof of authorization to do business. The
13 32 bill requires furnishing the name, physical address, and
13 33 telephone number of the licensee's agent for service of
13 34 process, which replaces a provision repealed by the bill which
13 35 had designated the superintendent of banking as the agent for
14 1 service of process. The bill also requires an applicant to
14 2 furnish a description of their proposed debt management
14 3 program and a copy of disclosures required in the chapter to

14 4 be provided to debtors.

14 5 The bill replaces current Code section 533A.8 specifying
14 6 written contract requirements with a new list of requirements
14 7 applicable to a licensee when dealing with a potential debtor
14 8 client or otherwise engaging in the business of debt
14 9 management. The requirements include describing the
14 10 methodology of the debt management program so a debtor can
14 11 make an informed decision regarding the appropriateness of the
14 12 program, conducting a comprehensive review of the debtor's
14 13 debts and the debtor's monthly budget, and performing a
14 14 thorough written budget analysis.

14 15 The bill provides additional requirements relating to
14 16 disclosures required to be made by a licensee. The bill
14 17 provides that a licensee, including any third party who
14 18 markets or sells a debt management program on behalf of a
14 19 licensee, must make a series of disclosures to a debtor both
14 20 verbally and in writing before the debtor signs a contract to
14 21 enroll in the debt management program. The disclosures
14 22 include the total estimated fee the debtor will pay for
14 23 participating in the program, that the licensee cannot
14 24 guarantee any specific results, that the debtor may elect to
14 25 discontinue participation in the program without penalty at
14 26 any time, and that any concession obtained regarding the
14 27 principal amount of debt may be considered income to the
14 28 debtor subject to income tax. Disclosures are also specified
14 29 applicable to debt management programs which do not require
14 30 receipt of money from the debtor to distribute to the debtor's
14 31 creditors, and to debt settlement programs. The bill contains
14 32 requirements regarding the form and manner of verbal and
14 33 written disclosures, and states that it is a violation of the
14 34 Code chapter for a licensee, or any third party who markets or
14 35 sells a debt management program on behalf of the licensee, to
15 1 contradict the required disclosures in any representation,
15 2 advertising, or solicitation.

15 3 Further, the bill specifies the nature of the contents of a
15 4 written contract entered into between a licensee and a debtor,
15 5 including the duration of the contract, charges, termination
15 6 options, licensee information, and a description of services
15 7 to be performed. If the debt management program is based on a
15 8 model which requires the licensee or any licensee to receive
15 9 money or evidences thereof from the debtor to distribute to
15 10 the debtor's creditors, the bill specifies procedures
15 11 regarding such receipt and distribution. If it does not, the
15 12 bill requires the debtor to maintain control of the funds.
15 13 The licensee may not receive consideration from third parties
15 14 in connection with services rendered to a debtor.

15 15 Requirements relating to books, accounts, records,
15 16 advertising, and internet website content are also provided.

15 17 In addition, the bill addresses fees. The bill provides
15 18 for a one-time initiation fee not to exceed \$50, and
15 19 additional fees in amounts and at intervals which vary
15 20 depending upon whether the debt management program requires
15 21 distribution of money to the debtor's creditors.

15 22 The bill adds several new licensee actions which are
15 23 considered unlawful acts and a violation of the Code chapter.
15 24 They include making, or facilitating the debtor in making, any
15 25 false or misleading claim regarding a creditor's right to
15 26 collect a debt; disputing, or facilitating the debtor to
15 27 dispute, the validity of the debt absent a good faith belief
15 28 by the debtor that the debt is not validly owing; challenging
15 29 a debt without the written consent of the debtor; providing or
15 30 offering to provide legal advice or legal services unless the
15 31 person providing or offering to provide legal advice is
15 32 licensed to practice law in the state in which the debtor
15 33 resides; executing a power of attorney or any other oral or
15 34 written express or implied agreement that extinguishes or
15 35 limits the debtor's right at any time to contact or
16 1 communicate with any creditor; taking a wage assignment or
16 2 lien or other security to secure the payment of compensation;
16 3 and inducing or attempting to induce a debtor to enter into a
16 4 contract which does not comply in all respects with the
16 5 requirements of Code chapter 533A. Additional unlawful acts
16 6 specified in the bill relate to advertising and
16 7 misrepresentation.

16 8 Finally, the bill provides that a waiver of the provisions
16 9 of Code chapter 533A is void and unenforceable as contrary to
16 10 public policy, and prohibits the attempt by a licensee to
16 11 induce a debtor to waive the debtor's rights.

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